

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
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## PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference 232362		Date of mailing (day/month/year) <b>25 APR 2008</b>
<b>FOR FURTHER ACTION</b> See paragraph 2 below		
International application No. PCT/US05/00418	International filing date (day/month/year) 07 January 2005 (07.01.2005)	Priority date (day/month/year) 07 January 2004 (07.01.2004)
International Patent Classification (IPC) or both national classification and IPC IPC(8): A61K 9/127( 2006.01); C07H 21/04( 2006.01); C12N 15/88( 2006.01) USPC: 424/450; 536/24.5; 435/458		
Applicant NEOPHARM INC.		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I      Basis of the opinion
- ☐ Box No. II      Priority
- ☒ Box No. III      Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV      Lack of unity of invention
- ☒ Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI      Certain documents cited
- ☐ Box No. VII      Certain defects in the international application
- ☐ Box No. VIII      Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion 08 April 2008 (08.04.2008)	Authorized officer Richard Schutze, Ph. D. Telephone No. 571-272-0500
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Form PCT/ISA/237 (cover sheet) (April 2007)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/00418

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

☒ the international application in the language in which it was filed

☐ a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. ☐ This opinion has been established taking into account the rectification of an obvious mistake authorized by or notified to this Authority under Rule 91 (Rule 43bis.1(a))

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ on paper

☐ in electronic form

c. time of filing/furnishing

☐ contained in the international application as filed.

☐ filed together with the international application in electronic form.

☐ furnished subsequently to this Authority for the purposes of search.

4. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

5. Additional comments:

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application
- ☒ claims Nos. 13-63, 65 and 72-119

because:

- ☐ the said international application, or the said claim Nos. \_\_\_\_\_ relate to the following subject matter which does not require an international search (*specify*):

- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 13-63, 65 and 72-119 are so unclear that no meaningful opinion could be formed (*specify*):

Claims 13-63, 65, and 72-119 are improper multiple dependent claims.

- ☐ the claims, or said claims Nos. \_\_\_\_\_ are so inadequately supported by the description that no meaningful opinion could be formed (*specify*):

- ☐ no international search report has been established for said claims Nos. \_\_\_\_\_

- ☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b).

- ☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

- ☐ See Supplemental Box for further details.

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**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims <u>1-12,68 and 71</u>	YES
	Claims <u>64,66,67,69 and 70</u>	NO
Inventive step (IS)	Claims <u>1-12,68 and 71</u>	YES
	Claims <u>64,66,67,69 and 70</u>	NO
Industrial applicability (IA)	Claims <u>1-12,64 and 66-71</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claim 64 lacks novelty under PCT Article 33(2) as being anticipated by Tuschl et al (US 20030108923 A1). Tuschl taught a method of inhibiting expression of a target gene by administering to a cell a composition comprising an siRNA and cationic liposomes. Expression of the target gene was assayed subsequent to administration of the siRNA. See paragraph 136. Thus Tuschl anticipates all of the active method steps of the claim.

Claims 66, 67, 69, and 70 lack novelty under PCT Article 33(2) as being anticipated by Marcusson et al (1998). Marcusson taught a BODIPY labeled cationic lipid (DOTAP). The claim term "cardiolipin analog" is interpreted broadly here to embrace molecules with lipidic character. Thus Marcusson anticipates the claims.